(24)

In The

SUPREME COURT OF THE UNITED STATES

Number 443

CHARLOTTE C. WORLEY, DEBTOR, PETITIONER,

V.

CHARLES W. WAHLQUIST; FRANCIS M. WHITLOCK, AS ADMINISTRATOR OF THE ESTATE OF SARAH E. WHITLOCK, DECEASED; AMERICAN BANKERS INSURANCE COMPANY, A CORPORATION; THE OMAHA NATIONAL BANK, A CORPORATION, TRUSTEE; ROBERT L. SMITH; AND OAK PARK TRUST AND SAVINGS BANK, TRUSTEE, SECURED CREDITORS, RESPONDENTS.

RESPONDENTS' BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT.

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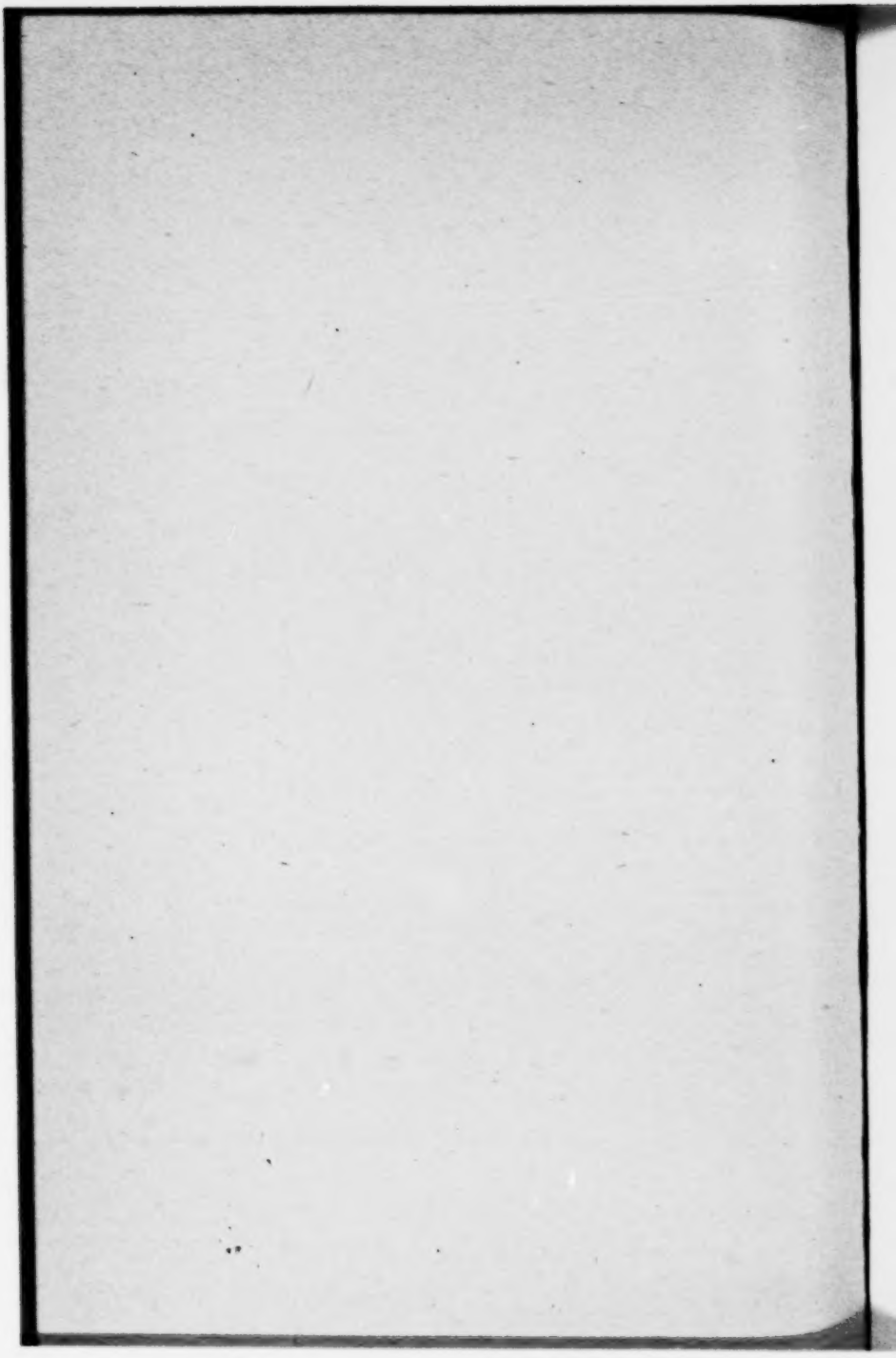

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The respondents, and each of them, pray that the petition of Charlotte C. Worley, petitioner, that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals, Eighth Circuit, in the above cause, designated in said court as No. 12,960, wherein the petitioner was appellant and the respondents were appellees, be denied.

I.

REASONS RELIED UPON FOR DENIAL OF WRIT.

1. The decision of the Circuit Court of Appeals does not deprive a farm debtor of the right and opportunity to make compromise settlements with secured creditors so as to provide for the debtor's financial rehabilitation, as that question was neither presented nor decided in said matter.

2. Respondents deny that the farm debtor has offered to pay into court the amount of the rentals due the respondents, except upon unreasonable conditions dictated by her at the time of trial, which are not imposed upon the respondent creditors by law.

3. The question of whether a farm debtor may make outside settlements and financial arrangements as to redemption with friendly secured creditors without obtaining prior approval of the court was neither submitted to nor decided by the court.

4. Section 75 (s) (2) of the Bankruptcy Act (11 U. S. C. A. 203 (s) (2)), requires that the rental shall

be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed, first, among the secured creditors as their interests may appear, second, among the unsecured creditors as their interests may appear.

5. Under Section 75, sub s (3) of the Bankruptcy Act any creditor (or debtor) is entitled to a re-appraisal of his security at any time before redemption, particularly when the application for re-appraisal is timely made and it has been stipulated and agreed by all parties concerned that the security has increased (or changed) in value since the initial appraisal.

6. Respondents deny that farm debtor's failure to redeem at the initial appraisal was due to no fault of farm debtor.

7. The decision does not hold that the mere filing of requests for re-appraisal by secured creditors deprives a farm debtor of an opportunity to redeem at the value fixed at the initial appraisal.

II.

SHORT STATEMENT OF THE MATTER INVOLVED.

The following is submitted by way of addition and correction to petitioner's statement.

Petitioner's original petition in these proceedings was filed by her on November 5, 1937. The schedules thereto attached list, in addition to taxes and debts owing the United States and taxes owing to the State of Nebraska and its municpal subdivisions, the names of 17 creditors holding claims secured by real estate mort-

gages, and the names of 32 creditors holding unsecured claims (Record 1-17).

The United States, the State of Nebraska and its municipal subdivisions, and the unsecured creditors did not file so-called waivers of payment of rents into court or agreements concerning rental payments and redemption.

Between the time of filing said petition on November 5, 1937, and the date of the effective rental order dated February 19, 1943, a number of rental orders were entered all of which, to date, have been resolved in favor of the debtor and against the creditors.

The effective rental order of February 19, 1943, among other things, provides, first, that all rentals shall be paid into court; second, that creditors holding mortgages on the debtor's 2,960 acre Box Butte County farm shall participate in the rents in the proportion to the acreage covered by the mortgages; and third, appointed P. T. Grove as creditors' agent to represent their interests in ascertaining production of and proceeds from crops payable as rental, his fees and expenses to be paid by the creditors and no part thereof to be charged to the debtor.

The debtor operated under this effective rental order, from the date thereof until after her crops were harvested and shortly before trial, without exception on her part or on the part of any creditor.

Debtor's application for appraisal, filed January 23, 1942, does not express a "present desire" or "readiness" to redeem, but a desire for an "opportunity" to redeem for the appraised value (Record 21).

The court's order, filed August 6, 1942, on creditors' exceptions to the original appraisal was based entirely upon the fact that there was no evidence of fraud in making the appraisal and not upon the question of whether the value was fair and the last paragraph expressly provides "that the order herein made concerning said appraisal shall be and is without prejudice to a later application on the part of any or all of said creditors for a re-appraisal, or any objection or exception that may be made to any such later application" (Record 35).

The motion which petitioner filed August 12, 1942, was made before the stay period expired and was not an offer to redeem, but a request that the court fix terms and allow her time to redeem at the initial appraisal (Record 36).

The aforesaid motion was overruled January 22, 1943, only to the extent that it constitutes a motion for action by the court (Record 41).

Petitioner's statement that secured creditors who then owned all of the mortgages, other than those held by the respondents herein, had several months before filed their acceptance of the appraisal and signified their willingness to permit redemption by the debtor at such appraised amount is not a correct statement in that only two of her creditors filed such acceptances, one of them being Terry Carpenter who then alleged ownership only of a mortgage on 160 acres (Record 37), and Alliance Loan and Investment Company who then alleged ownership only of a mortgage on 160 acres and another on 320 acres (Record 37-38).

On September 3, 1942, each of respondents filed a separate request for re-appraisal of his security (Supp. Record 7-14), and renewed the requests on September 4, 1943 (Record 47-58).

The court, by its order, dated January 22, 1943, deferred ruling on the aforesaid "request for re-appraisal filed by creditors in September, 1942," until the further order of the court (Record 42). The ruling was deferred by the court and not at the instance of the creditors.

The petitioner has never paid the rentals under the effective rental order of February 19, 1943, due these respondents, and has never offered to pay the 1943 rental due these respondents except, at the trial she offered to pay the amount of rental she claimed due them and then only upon condition that the offered payment be accepted in full settlement, without investigation or verification.

According to the records the only claims owned by friendly creditors at the time the rental order was entered, February 19, 1943, was the one owned by Alliance Loan and Investment Company covering 160 acres and two owned by Terry Carpenter, one covering 160 acres and the other the Sheridan County land. The other assignments held by them were procured between the time of the effective rental order and the trial. At the trial Alliance Loan and Investment Company assigned its claims to Martha E. Hillerege (Record 224-225).

At the trial, on December 6, 1943, it was stipulated between the petitioner (debtor) and respondents (creditors) that there has been an increase in the value of the land since the original appraisal (Record 157).

ARGUMENT.

Regarding Rentals.

Section 75 (s) (2) of the Bankruptcy Act (11 U. S. C. A. 203 (s) (2)), provides:

> "* * * such rental shall be paid *into court*, to be used, first, for payment of *taxes* and *upkeep* of the property, and the remainder to be distributed among the secured and *unsecured* creditors and applied on their claims, as their interests may appear. * * *" (Italics supplied.)

Petitioner is in error in stating "that the entire controversy herein hinges upon the question as to whether the debtor had a right to file a waiver from some of the secured creditors and take credit for the amount so saved on the payment of the rentals." This proceeding was instituted by respondents solely because the debtor fails, neglects and refuses to comply with the rental order by paying into court rentals which they, and they alone, would participate.

Respondents are not and never have been interested in the settlements, if any, made by the petitioner with her other creditors, either as to rentals or redemption, so long as she does not use rentals owing to these respondents in making such settlements. However, the trial court, on its own motion, and incidental to the is-

sues presented at the trial between the petitioner and the respondents, was concerned by the fact that the petitioner and certain other creditors were ignoring the bankruptcy court in the operation of petitioner's property wherein the trial court said in its memorandum opinion, as stated in the record at pages 216, 217 and 220, as follows:

> "Finally, the debtor asserts in her pleadings that she should not be held in default because the moving secured creditors are only a part of those holding liens on her lands; that Carpenter (it now appears, Carpenter and Martha E. Hillerege) has purchased the other liens; and that she has an arrangement with him whereby she may redeem at the initial appraisal the lands on which he has liens, and meanwhile be absolved from rental responsibilities as to them. Generally, Carpenter and Mrs. Hillerege agree that such an arrangement exists."

Let the debtor's situation be clearly stated. She is a bankrupt. The filing of her initial petition herein "immediately * * * subject(ed) the farmer and all his property, wherever located, for all the purposes of this section to the exclusive jurisdiction of the court." See Title 11 U. S. C. A., Section 203 (n) wherein it is further provided that:

> "In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been

> filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

By subsection (o) of the legislation, it is also provided that:

> "All of the debtor's property, wherever located, shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in this section."

Even the *possession* of the debtor's property which she is allowed to retain, is, by subsection (s) (2) of the legislation, allowed to her only, "in the custody and under the supervision and control of the court," and expressly "on the condition of the payment of rental. * * *"

> "The reasons prompting the court to that attitude are these: (a) In any event, there is before the court no accounting, upon which, if the suggested division were to be approved in principle, the court could affirm the correctness of the tendered rental, even on the debtor's theory of division. (b) Defaults would still remain in the actual marketing of grains, as distinguished from the negotiation of loans thereon. (c) For 1943, and so long as its rental order stands, the accounting is to be for the rentals of all of the land. The court is not going to give effect to privately and secretly negotiated and concealed arrangements between the debtor and a selected and favored group of credi-

tors. Let full accounting, payment and distribution up to date be made; and then if prospective changes are to be made let the interested parties present in writing, openly, frankly and honestly, the arrangement which they have between themselves. If it is at all possible, consistent with fairness to other creditors, the court will approve the arrangement; for example specifying an agreed interest rate as to certain lands as rental for the future in lieu of grain rental, if, in the circumstances affecting the debtor's operation of her land, such action seems calculated to work no disadvantage to dissident creditors. (d) The position taken by the debtor neglects the fact that both by the rental order and by the law, Title 11 U S. C. A., Section 203 (s) (2), the debtor is to pay rent not to the secured creditors, but rather to the court; and that the creditor is to participate in it only upon the court's order and after the satisfaction of certain specified prior charges. It is beyond the power of the debtor and her creditors particularly of the debtor and a favored creditor, to alter the court's order, save with the court's approval. (e) Corollary to the last item, the actual allocation and division of the gross rentals are to be made by the court upon application and showing and not by private arrangements of interested parties, and in this instance, it cannot yet be exactly known how the gross rentals for 1943 from the debtor's lands will be distributed."

In addition to the statements of the trial court on the subject, we wish to add that the petitioner's schedules list the names of 32 unsecured creditors, none of whom have filed waivers to the payment of rents and none of whom have agreed that the petitioner may make private arrangements with friendly creditors outside of court.

Petitioner has entirely ignored their rights. The act specifically provides that the court shall distribute the rents, after payment of certain specific items, among the secured and *unsecured* creditors and apply on their claims as their interests may appear.

It is without doubt the intention of the act that if the value of the property and the rents received during the stay period exceed the encumbrances on the debtor's property the unsecured creditors will share in the surplus. Petitioner has entirely ignored the rights of the unsecured creditors.

The debtor operated under the rental order of February 19, 1943, until shortly before the trial, December 6, 1943, without objection to the rental order on either the part of the debtor or any of the creditors. The rental order provides that the creditors shall pay the fees and expenses of their agent, P. T. Grove, appointed in their behalf by the court. The debtor and her friendly creditors, Terry Carpenter and Alliance Loan and Investment Company, have sought to evade the payment of their proportion of the fees and expenses of the creditors' agent out of their share of the rents, notwithstanding that they had the opportunity to except to the rental order at the time it was entered and did not and that nearly all of the assignments of the secured creditors which they now hold were procured after the rental order was entered.

It is true, as stated by petitioner, that this court has said that "the Frazier Lemke Act (§75 (s) of the B. A.) must be liberally construed to give the farmer-debtor the full measure of relief afforded by Congress," but it

is also true that this court has said in the case of *John Hancock Mutual Life Insurance Company* v. *Bartels*, 308 U. S. 180, 84 L. Ed. 176, that:

> "The procedure under subsection (s) is intended to protect all interests. * * * The scheme of the statute is designated to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved."

Concerning petitioner's statement that "at the trial on December 6, 1943, she offered to pay into court the rents due these Respondents," the facts are that the petitioner had violated the provisions of the rental order by refusing to furnish the agent of the creditors, appointed by the court for that purpose, statements and information concerning her crops produced, proceeds from the sales of crops, rentals collected from her tenants, and other information and, at the trial, the creditors were compelled to call her as a witness and rely entirely upon her own statements without the opportunity to verify the same. Her testimony is as follows (Record 147):

> "306 Q. Is that tender of the rent conditioned upon the other tender being accepted?
>
> A. I don't think so, what do you think Mr. Ginsburg?
>
> Mr. Ginsburg: I thought I made it clear, as counsel for the witness, I want to again repeat, we tender both for the redemption and that we are not tendering one without the other.

The Court: Is the Court to understand that no tender at all is made of the rental except and apart from and divorced from a tender of the redemption?

Mr. Ginsburg: That is correct.

307 Q. We assume that you do not intend to pay this rent unless you are permitted to redeem at the initial appraisal?

Objection. Sustained without prejudice to counsel for secured creditors inquiring as to what her intention actually is.

308 Q. Miss Worley, why do you join together the tender which you make to redeem the land with the tender of the creditors' 1943 rental?

A. Well, I want to pay my rent at this time. If I have to appeal the question is whether I have the right to the first appraisal, it would seem wise to appeal rent also because it is a unit rent.

After a conference with her attorney, debtor reconsidered and offered to pay into court an amount which she claimed to be the rental due from lands mortgaged to appellees in accordance with the rental order of February 19, 1943, amounting to $3101.40, *but only upon condition that it be accepted in full settlement.* She stated she then had the money available (Rec. p. 149).

No rental for 1943 has been paid to this date."

The criticism by the trial court which the petitioner complains of has to do with petitioner's conduct during the trial with relation to her farming operations and appears in Findings of Fact numbered 23, 26 and 27, and Findings of Law numbered 23, of the court's order (Record 238, 239, 243) and is as follows:

23.

"The debtor maintains no bank account though her financial turnover has been in terms of thousands of dollars annually, and her financial dealings cannot be traced through normal business channels. In lieu of banking connections during the pendency of this cause she has borrowed money from one Frank Abegg who operates a loan business under the name of Alliance Loan Investment Company, and has also paid to, and lodged with, him large sums of money arising from the sale and marketing of crops raised on her real estate, all in a secretive and confusing manner and without the making of any accounting thereof to the court."

26.

"The only information the court has concerning crops planted or produced by the debtor during the year 1943 is the information given by the farm debtor when called to testify at the hearing herein by the secured creditors."

27.

"The debtor's testimony, demeanor, deportment and conduct in court in respect to the accounting for and payment of rents was, and is, evasive, uncooperative, secretive and contumacious."

23.

"The debtor's offer at the hearing herein on December 6, 1943, to pay as rent the sum of $3,101.40 in full satisfaction of all rents then accrued from lands mortgaged to the applicant creditors is inadequate to purge the default for the following reasons:

"(a) It is incomplete and inadequately supported by production of data.

"(b) It was not an accounting for the rentals received from all of the lands of the debtor, or even of those located in Box Butte County, Nebraska.

"(c) It was upon a basis which ignored and rejected the court's effective rental order.

"(d) Defaults would still remain in the actual marketing of grains as distinguished from the negotiations of loans thereon.

"(e) The offer ignores the fact that the debtor is to pay rent not to the secured creditors, but rather to the court.

"(f) The offer was conditional."

Regarding Redemption.

We cannot agree to petitioner's statement that "the question here presented is whether the right of the debtor to redeem at the amount of the initial appraisal can in any and every instance be defeated by the mere demand of the creditors for a re-appraisal under the first proviso of said Section 75 (s) (3)."

We do not concede that petitioner's aforesaid statement is not the law, but in this case the debtor herself agreed at the trial that her land has increased in value since the initial appraisal. Furthermore, respondents were prepared to prove and would have proved, except that the trial court thought it unnecessary, that their securities had more than doubled in value between the time of the initial appraisal and the time of trial and that such increase in value was gradual from the time of the initial appraisal.

The debtor quotes from *Wright* v. *Union Central Life Insurance Company*, 311 U. S. 273, 85 L. Ed. 184, to the effect that the provisions of the act must be liberally construed to give the debtor the full measure of relief afforded by Congress. However, in such last named case and at a point only a few lines earlier, the court said:

> "Safeguards were provided to protect the rights of the secured creditors, throughout the proceedings, to the extent of the value of the property."

Again, in *John Hancock Mutual Life Ins. Co.* v. *Bartels*, 308 U. S. 186, 60 Sup. Ct. 221, 84 L. Ed. 176, the court, in the closing part of its opinion, said:

> "The scheme of the statute is designed to provide an orderly procedure so as to give whatever relief may properly be afforded to the distressed farmer-debtor, while protecting the interests of his creditors by assuring the fair application of whatever property the debtor has to the payment of their claims, the priorities and liens of secured creditors being preserved."

It is apparent, therefore, that appellant's claim to a liberal construction carries with it the unseverable admission that the rights of the secured creditors are to be safeguarded and preserved. The ultimate result necessarily is that appellant's reference to liberality of construction utterly fails either to affect or establish the claim that the debtor was not accorded the right to redeem at the existing appraisal nor that she was even entitled to have such right accorded her in the face of the repeated and timely requests for re-appraisal on the part of the secured creditors.

Appellant next contends that she was denied the right to redeem at the existing appraisal because the appellees insisted upon conditions being placed upon the right of redemption in excess of those prescribed by law. Specifically, appellant claims that she was denied the right to redeem because the secured creditors demanded the payment by the debtor of delinquent rentals covering a period prior to the date of the stay order. In considering such an argument the fundamental inquiry must logically be: Did the trial court refuse the debtor's so-called attempted redemption because of the failure to pay rentals covering a period prior to the date of the stay order? If this question is answered in the negative, appellant's entire contention in this part of her argument falls apart. In short, if the trial court placed no reliance on the claim of the secured creditors that debtor be required to pay delinquent rentals as a prerequisite of redemption, debtor could not be and was not prejudiced. What are the facts in this connection? An examination of the record shows that the trial court specifically determined that the secured creditors' contention as to delinquent rentals need not be passed upon and placed its conclusion squarely upon the ground that the prior request of the secured creditors (coming as it did long before any move was made toward redemption by the debtor) was in and of itself sufficient, as a matter of law, to prevent redemption by the debtor until after the re-appraisal has been had. This clearly appears from the following statement made by the trial court in its memorandum filed March 3, 1944 (Rec. 210):

> "The Secured Creditors, Charles W. Wahlquist and others, also filed separate answers to the tender

> in redemption (filings 258, 259, 260, 261, 265) in which they denied the debtor's claimed right to redeem, first because they themselves had the right to re-appraisal; secondly, by reason of the debtor's persistent default in the payment of rentals. Their first ground is considered to be well taken and sufficient, and, therefore, the second will not be discussed in this relation.",

and from paragraphs 2, 3, and 4 of the trial court's conclusions of law relative to the debtor's tender for redemption (Rec. 253), and from paragraph 4 of the trial court's conclusions of law relative to the debtor's petition to redeem (Rec. 259). The inescapable conclusion is that the trial court rested its holding upon the prior seasonable request for a re-appraisal by the secured creditors and therefore it is utterly impossible to conceive how the contention of the secured creditors as to delinquent rentals operated to affect or prejudice debtor's redemption rights.

In *In re Wright*, (7th Cir.) 126 Fed. (2d) 92, in which certiorari was denied, 317 U. S. 627, 63 Sup. Ct. 39, 87 L. Ed. 507, the court stated:

> "(1) May there, under any circumstance, be a re-appraisement? * * *
>
> "Our conclusion as to the first query is that neither party is bound by the first appraisement. The court, in the interest of justice, can, and should, make a re-appraisement, if the facts warrant it. No express statutory authorization for a re-appraisement would be necessary. It is inherent in equity principles. Moreover, we think the statute authorizes re-appraisals.

> "On behalf of a debtor, it is easy to conceive of instances where buildings were burned, or damages from lightning, floods, or other causes have materially lessened the value of the premises. Fairness to the debtor would require a reduction in the redemption price, that is in a re-appraisement.
>
> "On the other hand, if the circumstances show an increase in the value of land during the years which the debtor is in possession, fairness to the creditor also requires a re-appraisement."

Petitioner's first and only offer of redemption was made at the time of the trial on December 6, 1943, at which time she admits an increase in the value of her lands. It is true that on August 12, 1942, she filed an instrument accepting the initial appraisal and requesting the court to grant her time within which to pay the appraised value of the property into court and to fix the terms of payment and that the court overruled her motion or application insofar only as it required action on the part of the court.

Section 75 (s) (3) of the Bankruptcy Act provides:

> "at the end of three years, or prior thereto, the debtor may *pay into court* the amount of the appraisal of the property of which he retains possession." (Italics supplied.)

In view of such provision and the fact that the stay order was entered February 22, 1943, and would not expire until February 22, 1946, conditional upon compliance with the rental order, why was it necessary for the debtor to request the court to fix terms of redemption and time for redemption other than those imposed by the statute?

Petitioner states that all the creditors did was to file applications for a re-appraisal and nothing further. The facts are that respondents were not only prepared to present evidence in support of their applications for re-appraisal, but repeatedly invited action by the court upon them. On the other hand, the petitioner, having obtained an initial appraisal favorable to her, notwithstanding a gradual increase in value of the property, has sought to ignore respondent's applications for re-appraisal instead of cooperating to have them acted upon by the court one way or another.

The trial court has been familiar with this proceeding since its inception in 1937, and that the petitioner was not able to redeem until December 6, 1943. That the trial court did not take affirmative action on the applications for re-appraisal because it considered it useless to cause a re-appraisal until it became apparent that redemption would be made, appears from the court's statement in its memorandum opinion (Rec. 222), which is as follows:

> "Finally, there are the many requests of the secured creditors, Charles W. Wahlquist and others, for re-appraisal. They would be sustained and immediate re-appraisal would be directed but for one circumstance. It is desirable that the revaluation be made as nearly as practicable at the time of, or not too long before, redemption. * * * If the debtor were to signify her desire presently to redeem at the reappraised value, the motions for re-appraisal would be allowed immediately, but she does not so indicate. On the contrary, still asserting her claim of the right to redeem at the initial appraisal, * * * she asserted on the hearing that she would redeem

> at a re-appraised value only if and when her threatened appeal should be finally unavailing * * * in that situation present re-appraisal would be a useless and expensive gesture."

Petitioner contends that she should be permitted to redeem at the initial appraisal because she wanted to redeem at that appraisal shortly after it was made. If, on August 12, 1942, petitioner had been able to redeem at the initial appraisal she undoubtedly would have perfected the redemption in the manner required by law instead of requesting the court to allow her time to redeem for the amount of such appraisal.

Petitioner's statement that she was prevented, through no fault of her own, from redeeming at the initial appraisal, and that she did not request any delay in redeeming at that value is contrary to the facts as disclosed by the record.

It is not the court that has held over the head of the debtor the threat of a re-appraisal, it is the law itself as written by Congress.

CONCLUSION.

The trial court and the Circuit Court of Appeals, on appeal, terminated the debtor's stay period first, because she failed and refused to comply with the rental order insofar as it relates to respondents; second, because she, with two friendly creditors, conspired to disregard the jurisdiction of the court over her property and the court's right to direct payment of taxes and upkeep of the property before the remainder can be distributed to the friendly creditors, and disregard the rights of the

unsecured creditors who participate in the surplus, if any.

The decision does not deprive the farm debtor of an opportunity to redeem at the value fixed at the initial appraisal provided there has been no increase in value between the time of the original appraisal and the time of the redemption.

The record does not support the petitioner's statement that she sought to redeem promptly after the initial appraisal and repeatedly requested such an opportunity. The record is that she attempted to commit the court and her creditors to the initial appraisal and thus deprive the creditors of their right to a re-appraisal, notwithstanding an increase in value, by simply talking about redeeming without any further action on her part.

We submit that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated October 22, 1945.